

STATE OF INDIANA

ERIC J. HOLCOMB, Governor

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OPINION OF THE PUBLIC ACCESS COUNSELOR

CHARLES E. JUSTISE,)	
Complainant)	
v.	j	17-FC-10
MARION COUNTY PROSECUTOR'S OFFICE)	
Respondent)	

ADVISORY OPINION February 23, 2017

This advisory opinion is in response to the formal complaint alleging the Marion County Prosecutor's Office ("MCPO") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-1.5-1 et. seq. MCPO responded on February 2, 2017 via Ms. Jennifer Morris, Executive Assistant. Her response is included for review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on January 17, 2017.

BACKGROUND

The formal complaint dated January 17, 2017 alleges the MCPO violated the APRA by not fulfilling a records request in a reasonable time.

On December 8, 2016, the Complainant sent a records request for information pertaining to a former named employee. On December 14, 2016, respondents acknowledged the records request stating it would be reviewed and considered. On December 27, 2016, a follow up letter was sent to MCPO asking for an update with no response. A formal complaint was then filed with this office.

MCPO has answered arguing the following response was sent on January 18, 2017: *Upon review of your request, and the public records of this agency, we have determined that we do have public records*



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responsive to request but are being withheld at the discretion of the agency pursuant to Ind. Code 5-14-3-4(b)(8).

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See Indiana Code § 5-14-3-1*. The Marion County Prosecutor's Office is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. Accordingly, any person has the right to inspect and copy the MCPO's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

Indiana Code § 5-14-3-4(b)(8) states that personnel files of public employees may be withheld from public inspection except for information relating to the status of any formal charges against the employee; and the factual basis for a disciplinary action which final action has been taken and that resulted in the employee being suspended, demoted or discharged.

Based on the information provided, there is no indication the employee was involuntarily separated from employment. If this is the case, the agency does not have to produce any documentation as to why the employee is no longer at the Prosecutor's Office.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Marion County Prosecutor's Office did not violate the Access to Public Records Act.

Luke H. Britt

Public Access Counselor

Cc: Ms. Jennifer Morris